

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 78, 79 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: these claims are drawn to a distinct invention from that presented in claim 56 since claims 78-79 recite a hollow body, and blower means for drawing air into the body. These claims do not recite means for trapping. Hence these claims are drawn to a distinct invention from that of claim 56.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 70-75 and 78-79 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 56 and 61-62 are rejected under 35 U.S.C. 102(b) as being anticipated by Cross (US 1478424)

The patent to Cross shows an insect trap having a generally hollow body 1, 7, 8, 9 with a foraminous wall region 7. Cross shows a fan 3 in the body 1 for expelling air through the region. Cross shows a means 7 on the body for holding insects attracted by the air stream. The examiner notes the use of "means for" and is giving the claims their broadest reasonable interpretation at the present time. If applicant wishes the claims to be interpreted in light of 35 USC 112, sixth paragraph, please state so on the record in response to this Office Action. In reference to claim 61, Cross shows a hollow body 1, 3 partially formed by the wall region. In reference to claim 62, Cross shows means for expelling 3 being inside of the body.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 58-60, 63, 64-66, 67-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cross (US 1478424).

The patent to Cross shows an insect trap as discussed above. Cross does not disclose the air speed displaced by the fan. However, in reference to claims 58-60, 64-66, it would have been obvious to employ the recited air speeds since routine experimentation would be used to determine the optimum air speed. In reference to claim 63, Cross does not show the intake passage having an opening immediately adjacent to the wall region, but it would have been obvious to locate the intake passage

immediately adjacent to the wall region since merely the rearrangement of the location of parts is contemplated and the function is the same. See the citation to *In re Japikse*, below. In reference to claim 67, Cross does not show the foraminous region as a generally horizontal upper surface of the upper end of the body, but a generally horizontal lower surface of the lower end of the body, but it would have been obvious to employ a generally horizontal upper surface of the upper end of the body since merely a rearrangement of the location of part is contemplated and the function is the same. See *In re Japikse*, 86 USPQ 70. In reference to claim 68, Cross shows the body centered on an upright axis.

6. Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cross as applied to claim 56 above, and further in view of Focks et al. (US 4282673).

The patent to Cross shows a suction insect trap as discussed above. Cross does not show a cover for the body suspended spacedly above the body and orientated to shield the body from above. The patent to Focks shows a body 21 having a cover 29 suspended spacedly above the body 21. In reference to claim 55, it would have been obvious to provide Cross with a cover as shown by Focks to prevent the fan motor from the elements.

### ***Response to Arguments***

7. Applicant's arguments filed 3/21/2008 have been fully considered but they are not persuasive. Applicant argues that Cross does not use receptacle 7 to trap insects. However, this is incorrect since Cross states in lines 60-65 on page 1 that receptacle 7 traps insects. Applicant has submitted no evidence that the porous mesh 7 does not

improve the efficiency of the insect trap. In regard to Wigton, applicant argues that Wigton does not use the same attractant, but this is not correct since Wigton by generating carbon dioxide and blowing out of the trap is also blowing air, so air is also flowing and would act as an attractant. Applicant further argues that Wigton does not show the means for trapping being a suction tube is not on the emanating surface but this is not recited in claim 56. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., means for trapping insects being located on the emanating surface and the two dimensional surface are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant's argument with respect to Cross and Focks have been noted, but no further comment is deemed necessary at this time. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant's statement that if an expert reads Wigton about an air-emitting surface, it is clear for him that the flow goes to in any direction but downward. Claim 56 is silent on the direction of air movement.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

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